

## SENATE BILL No. 228

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3.1-29.

**Synopsis:** New generation tax credit. Provides that the commission for agricultural and rural development may certify taxpayers that invest in certain agricultural businesses as producer members. Provides that a producer member is eligible for a tax credit equal to the lesser of: (1) 50% of the producer member's investment; or (2) \$15,000. Limits the annual amount of credits available to certain capital projects. Requires the department of state revenue to determine a method to allocate credits among producer members.

**Effective:** July 1, 2004.

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**Skillman**

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January 8, 2004, read first time and referred to Committee on Finance.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## SENATE BILL No. 228

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 6-3.1-29 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2004]:

4 **Chapter 29. New Generation Tax Credit**

5 **Sec. 1. As used in this chapter, "agricultural commodity"**  
6 **includes:**

- 7 (1) a good derived from an agricultural commodity; and  
8 (2) an agricultural commodity used to produce renewable  
9 fuel.

10 **Sec. 2. As used in this chapter, "commission" refers to the**  
11 **Indiana commission for agricultural and rural development**  
12 **established by IC 4-4-22-6.**

13 **Sec. 3. As used in this chapter, "development facility" means a**  
14 **facility that:**

- 15 (1) is located in Indiana; and  
16 (2) produces an agricultural commodity.

17 **Sec. 4. As used in this chapter, "employee qualified capital**



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project" means a new generation cooperative or new generation processing entity that has:

- (1) at least one hundred (100) full-time employees; and
- (2) capital costs of at least fifteen million dollars (\$15,000,000);

as certified by the commission.

Sec. 5. As used in this chapter, "large capital project" means a new generation cooperative or new generation processing entity that has capital costs of at least one million dollars (\$1,000,000), as certified by the commission.

Sec. 6. As used in this chapter, "new generation cooperative" means an agricultural cooperative organized or incorporated under IC 15-7-1 that:

- (1) owns or operates a development facility or a renewable fuel production facility; and
- (2) is approved by the commission.

Sec. 7. As used in this chapter, "new generation processing entity" means a business entity other than a sole proprietorship that satisfies the following requirements:

- (1) The entity is approved by the commission under section 17 of this chapter.
- (2) The entity owns or operates a development facility or a renewable fuel production facility.
- (3) The entity has at least twelve (12) members or shareholders.
- (4) Producer members:
  - (A) hold a majority of voting rights of the entity and any governing body of the entity;
  - (B) control the hiring and employment of management of the entity; and
  - (C) deliver agricultural commodities to the entity for processing.

Sec. 8. As used in this chapter, "pass through entity" means:

- (1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) a partnership;
- (3) a limited liability company; or
- (4) a limited liability partnership.

Sec. 9. As used in this chapter, "person" means an individual, a corporation, a pass through entity, a trust, a fiduciary, or any other business entity.

Sec. 10. As used in this chapter, "producer member" means a

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person that:

- (1) is in the business of agricultural production; and
- (2) beginning January 1, 2005, invests in a new generation cooperative or a new generation processing entity.

Sec. 11. As used in this chapter, "renewable fuel" includes the following:

- (1) Biodiesel (as defined in IC 6-3.1-27-1).
- (2) Ethanol (as defined in IC 6-3.1-28-2).

Sec. 12. As used in this chapter, "renewable fuel production facility" means a facility for the production of renewable fuel that satisfies all the following:

- (1) The facility is located in Indiana.
- (2) The facility, after December 31, 2005, increases its renewable fuel production capacity each year by an amount determined by the commission.

The term includes an ethanol production facility (as defined in IC 6-3.1-28-3).

Sec. 13. As used in this chapter, "small capital project" means a new generation cooperative or new generation processing entity that has capital costs of less than one million dollars (\$1,000,000), as certified by the commission.

Sec. 14. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-2.5 (the state gross retail and use tax);
- (2) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (3) IC 6-5.5 (the financial institutions tax); and
- (4) IC 27-1-18-2 (the insurance premiums tax);

as computed after the application of credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 15. As used in this chapter, "taxpayer" means a person that has state tax liability.

Sec. 16. (a) A new generation cooperative shall apply to the commission for approval.

(b) Before the commission approves a new generation cooperative, the commission shall require the cooperative to submit the following information to the commission:

- (1) Proof of organization or incorporation under IC 15-7-1.
- (2) The number of producer members in the cooperative.
- (3) The amount of equity each producer member contributes to the cooperative.
- (4) The date on which each producer member contributes equity.

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(5) The number of employees of the cooperative.

(6) The capital costs of the cooperative.

(7) Any other information the commission determines is necessary.

(c) The commission may not approve a new generation cooperative that fails to submit any information required under subsection (b).

(d) Whenever the commission approves a new generation cooperative, the commission shall certify the cooperative as an employee qualified capital project, a large capital project, or a small capital project.

Sec. 17. (a) A new generation processing entity shall apply to the commission for approval.

(b) Before the commission approves a new generation processing entity, the commission shall require the entity to submit the following information to the commission:

(1) A certificate of existence or other proof of good standing from the secretary of state.

(2) The number of producer members in the entity.

(3) The amount of equity each producer member contributes to the entity.

(4) The dates on which each producer member contributes equity.

(5) The number of employees of the entity.

(6) The capital costs of the entity.

(7) Any other information the commission determines is necessary.

(c) The commission may not approve a new generation processing entity that fails to submit any information required under subsection (b).

(d) Whenever the commission approves a new generation processing entity, the commission shall certify the entity as an employee qualified capital project, a large capital project, or a small capital project.

Sec. 18. A new generation cooperative or a new generation processing entity shall use the investments of producer members only for the following purposes:

(1) Acquisition and construction of facilities.

(2) Acquisition of equipment.

(3) Acquisition of working capital.

Sec. 19. The commission shall approve a new generation cooperative or a new generation processing entity that satisfies the

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requirements of this chapter in the order in which the commission receives the cooperative's or entity's approval application.

Sec. 20. (a) The commission shall adopt criteria to certify a taxpayer as a producer member. The criteria must include the following proof of the taxpayer's investment in a new generation cooperative or new generation processing entity:

(1) The amount of the taxpayer's investment, certified by the new generation cooperative or new generation processing entity, as applicable.

(2) Proof of deposit of the taxpayer's investment by the new generation cooperative or new generation processing entity, as applicable.

(b) To be eligible to receive a credit under this chapter, a taxpayer must apply to the commission for certification as a producer member.

(c) The commission shall certify a taxpayer that:

(1) applies to the commission for certification; and

(2) satisfies the criteria adopted by the commission under subsection (a).

Sec. 21. Subject to section 25 of this chapter, a taxpayer that is certified as a producer member is entitled to a credit against the taxpayer's state tax liability in an amount equal to the lesser of:

(1) fifty percent (50%) of the taxpayer's investment in a new generation cooperative or a new generation processing facility; or

(2) fifteen thousand dollars (\$15,000).

Sec. 22. If a pass through entity is entitled to a credit under this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

Sec. 23. If the amount of the credit determined under this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for the first taxable year in which the taxpayer claims the credit, the taxpayer may carry over the excess to the immediately following five (5) taxable years. The amount of the carryover from a taxable year must be reduced to the extent that the taxpayer uses the carryover to obtain a credit under this

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chapter for a subsequent taxable year.

Sec. 24. To receive the credit provided by this chapter, a taxpayer must do the following:

(1) Claim the credit on the taxpayer's state tax return in the manner prescribed by the department in the taxable year in which the taxpayer invests in the new generation cooperative or new generation processing facility.

(2) Submit to the department a copy of the commission's certificate issued under section 20(c) of this chapter finding that the taxpayer is a producer member.

(3) Submit to the department proof of all information that the department determines is necessary to calculate the credit provided by this chapter.

Sec. 25. (a) The total amount of credits allowed under this chapter for all taxpayers in a taxable year may not exceed six million dollars (\$6,000,000).

(b) The total amount of credits allowed under this chapter in a taxable year for all producer members of a large capital project is one million five hundred thousand dollars (\$1,500,000).

(c) The total amount of credits allowed under this chapter in a taxable year for all producer members of an employee qualified capital project is three million dollars (\$3,000,000).

(d) This subsection applies if the total amount of credits for which all producer members of an employee qualified capital project or a large capital project are eligible in a taxable year exceeds the applicable maximum allowable amount under subsection (b) or (c). The department shall prorate the applicable maximum allowable amount among all eligible producer members based on each producer member's investment in the employee qualified capital project or large capital project in relation to the total investment of all producer members in the employee qualified capital project or large capital project.

(e) The department shall determine a method of allocating credits under this chapter.

Sec. 26. A producer member of a certified:

- (1) employee qualified capital project;
- (2) large capital project; or
- (3) small capital project;

that fails to employ the number of employees certified by the commission shall repay the amount of any credits the producer member receives under this chapter.

Sec. 27. A taxpayer may transfer, sell, or otherwise convey a tax

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1 credit allowed under this chapter.

2 Sec. 28. A taxpayer may not claim both a credit under this  
3 chapter and an ethanol production credit under IC 6-3.1-28.

4 Sec. 29. The commission may adopt rules under IC 4-22-2 to  
5 carry out its duties under this chapter.

6 Sec. 30. This chapter expires December 31, 2014.

7 SECTION 2. [EFFECTIVE JULY 1, 2004] IC 6-3.1-29, as added  
8 by this act, applies to taxable years beginning after December 31,  
9 2004.

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